

I am submitting comment on FCC 02-77, Declaratory Ruling And Notice Of Proposed Rulemaking in the matter of CS Docket No. 02-52, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities.

In the Declaratory Ruling adopted by the FCC regarding cable modem service, it was decided that cable modem service is not a "cable service" and not subject to franchise fees collected for cable service.

I make the point that the FCC should enter in its final ruling that franchise fees previously collected for cable modem service should be refunded to the consumer of the cable modem service and that the FCC should implement policy regarding the refund of these fees.

In paragraph 106 of the Declaratory Ruling (FCC 02-77), "Cable operators have expressed concern that any determination by the Commission, other than a finding that cable modem service falls within the classification of "cable service," will potentially expose cable operators to refund liability for franchise fees previously paid to localities and collected from subscribers based on cable modem service revenues" and "We understand that subscribers in other jurisdictions have raised the issue of whether franchise fees were lawfully collected from them and whether the fees collected should be refunded." The cable companies are recognizing they are responsible for collecting these fees and that under this ruling, they are morally responsible for refunding all fees collected that were associated with the cable modem service. Since the cable modem service is not a "cable service," then all taxes for the cable modem service should be refunded under this ruling since they were wrongfully collected under the new classification of cable modem service.

Paragraph 107 states, "While the Commission generally will not assert jurisdiction over franchise fee disputes that concern matters of local taxation, the Commission's policy has been to resolve franchise fee questions that bear directly on a national policy concerning communications and that call upon our expertise. We seek comment on whether disputes regarding franchise fees based on cable modem service implicate such a national policy, given that the fees in question were collected pursuant to section 622 and that our classification decision will alter, on a national scale, the regulatory treatment of cable modem service. We seek comment on whether it is appropriate to exercise our jurisdiction under section 622 to resolve the issue of previously collected franchise fees based on cable modem service revenues or whether these issues are more appropriately resolved by the courts." Since cable modem service is nationwide and under the jurisdiction of the FCC, a national policy is necessary to ensure uniform compliance with this new ruling. In this ruling, the FCC needs to address franchise fee refunds since it affects consumers nationwide. If left up to local jurisdiction, cable modem service customers will not all be treated equally. This could lead to multiple class-action lawsuits by cable modem service subscribers against the numerous cable service providers and has the potential to cost

everyone a total of several millions of dollars in litigation,
court costs, and attorneys fees.

Thank you for hearing my comments and taking them under
consideration.

Kenneth Simpson
15972 Bandera Rd
Helotes, TX 78023-3714
(210) 695-3210